IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2230 OF 2005.

Dashrath Karbhari Kanode. ... Appellant.

Versus.

The State of Maharashtra. ... Respondent.

Shri Sachdeo i/by Shri J.H.Ahuja for the Appellant.

Shri B.H.Mehta, A.G.P. for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 2nd May, 2006.

P.C.:

1. Admit. The learned A.G.P. waives service for the Respondent. Considering the facts and circumstances of the case the appeal is taken up for final hearing forthwith.

2. The Appellant is the claimant in a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The Reference court partly allowed the claim made by the Claimant and granted enhanced compensation. The only grievance made by the Appellant in this Appeal is that the interest under section 28 of the said Act is not granted on the component of interest under section 23(1-A) and solatium under section 23(2) of the said Act. The learned Advocate for the Appellant stated that so far as the Respondent-State is concerned the impugned award has not been challenged.

3. The learned A.G.P. for the State opposed the

appeal by pointing out the finding recorded by the Reference Court in paragraph 9 of the Judgment. He however stated that the impugned Judgment and Award dated 29th June 1998 has not been challenged by the Respondent-State.

4. I have considered the submissions. On a plain reading of the impugned Judgment, it is apparent that the interest under section 28 has been awarded only on the component of market value. The law on this point is no longer res-integra. In the decision of the Apex Court in the case of Sunder v/s. Union of India, reported in 2001 SOL Case No.551, the law on this point is now settled. It is thus obvious that the Appellant was entitled to statutory interest under section 28 of the said Act on all the three components, viz. market value under section 23(1), solatium under section 23(2) and interest under section 23(1-A) of the said Act. To that extent the appeal deserves to be allowed.

5. The Appeal is partly allowed. The Award of the Reference Court is modified only to the extent that the Appellant will be entitled to interest under section 28 of the Land Acquisition Act, 1894 on the market value under section 23(1), solatium under section 23(2) and the component of interest under section 23(1-A) of the said Act.

6. Rest of the impugned Judgment and Award is maintained as it is. There will be no order as to costs.

Judge.